IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION No.101 of 2004

Ezu Joseph Fernandes & ors. .. Applicants

versus

Lucy Ignatius Rodriques

(since deceased) & ors. .. Respondents

...

Mr.B.K. Desai for the applicants.

Mr.Mukesh Subramaniyam for respondent nos.2 to 5.

CORAM : B.H. MARLLAPALLE,J

DATED : 22nd August 2005.

ORAL JUDGEMENT :-

1. Though this application came to be admitted on 25th October 2004, motion moved on 14thh June 2005 by Shri B.K. Desai, learned Advocate appearing for the petitioners was allowed having regards to his age and the age of the petitioner no.1. The petition was heard finally and Shri Desai was granted time to take

instructions to withdraw the application with liberty to initiate the order initiating legal proceedings challenging the orders impugned in this application. Today, Mr.Desai mentioned the application and prayed for an order to be passed on merits..

2. The application challenges the order passed by the learned Joint District Judge at Thane in Misc.Application no.197 of 2004 declining to transfer RCS No. 583 of 19900 pending on the file of Mr.A.N. Sontakke, learned Joint Civil Judge, Jr. Division at Thane to any other Court. The petitioners have also prayed for the transfer of RCS no.204 of 1990 and Misc Application no.263 of 1990 from the Court of Mr.Sontakke, learned Joint Civil Judge, Jr. Division, Thane. Secondly, the petitioners have challenged the order passed by the learned Judge below Exhibit-17/1 on 24th September 2003 filed in RCS no.583 of 1999 and lastly, the applicants have prayed for the same relief which was set out in Miscellaneous Application no.197 of 2004 before the Learned Joint District Judge.

3. The plaintiff in RCS no.583 of 1999 reportedly died on 7th October 2002 and therefore, an

application at Exh.17 came to be filed on or about 23rd January 2003 to bring his LRs on record. It appears that in the mean while, the suit was abated. The petitioners had filed their say to this application and it was marked as Exhibit-21. The learned Judge of the trial Court noted that the suit was regarding the disputes of tenanted premises and to avoid the multiplicity of litigation, it would be appropriate to condone the delay.. The trial Court therefore set aside the abatement order and allowed the application for bringing the LRs of the plaintiff on record. No fault could be found in this order..

4. The learned Joint District Judge in his order dated 22nd September 2004 considered the averments made in the application for transfer and considered the issue whether the same application was required to be allowed. It was noted that Mr.Sontakke, the learned Joint Civil Judge, Jr. Division had allowed the application at Exhibit-17 and if the present petitioners were aggrieved they had a legal remedy to challenge the said order. The order did not indicate that there was any material irregularity or that it was biased by any personal considerations. It is held that a case pending

before the Court need not be transferred purportedly on moral grounds and more so when the allegations against the learned Judge were made in a very casual and irresponsible manner. On the perusal of record in RCS no.583 of 1989, the learned Jt. District Judge noted that it was initially pending before Mr.Sontakke and by a general order, it was transferred to the Court of the learned IVth Joint Civil Judge, Jr. Division, in June 2003 but subsequently in July 2003, a separate order was passed and the suit was re-transferred to the file of Mr.Sontakke. From the list of transferred cases, RCS no.583/1999 was given the next date of 11.6.2003 and the parties were directed to appear before the learned IVth Joint Civil Judge, Jr. Division. The transfer order was passed thereafter in July 2003. This order passed by the learned Joint District Judge in declining to entertain the application for transfer does not call for any interference.

5. Having regards to the averments made in MCA no.197 of 2004 and the reasoning set out in the order dated 24th September 2003 passed below Exhibit 17, this application filed u/s.24 of the Code of Civil Procedure fails on the same grounds as have been set

out by the learned Joint District Judge. Such transfer petitions cannot be allowed for the asking and there is no material to show even prima facie that the Courts below were influenced by any personal bias or any of the impugned orders suffer from any material procedural irregularity.

6. Under the circumstances, this Miscellaneous Application must fail.

7. For challenging the orders passed by the Courts below in Misc. Application no.197 of 2004 and below Exhibit-17, this Miscellaneous Application was not tenable. However, as Rule was granted by this Court on 5th August 2004, this application has been considered as an application u/s.24 of the Code of Civil Procedure.

8. The application is hereby dismissed. Rule discharged. No costs.

B.H. MARLAPALLE, J